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Supreme Court, U.S.
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No. 95-1360

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

CLINTON WEBB AND NATIONSBANK OF VIRGINIA, N.A., F/K/A SOVRAN BANK, N.A., CO-EXECUTORS OF THE ESTATE OF MARY MORTON PARSONS, DECEASED, PETITIONERS,

V.

THE UNITED STATES OF AMERICA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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QUESTION PRESENTED FOR REVIEW

Whether the doctrine of equitable tolling, presumed to apply to claims against the government as expressed in *Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990), is applicable to toll the limitations period for tax refund claims under 26 U.S.C. §§ 6511 (a) and (b).

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INTRODUCTION

Petitioners are cognizant of the restriction of Rule 15.6 of the Rules of the Supreme Court that this Reply should address only new matters raised by the Government's brief. Hence, while Petitioners do not concur with the Government's summary of the proceedings, certain aspects of its discussion of the

relevant cases, and its characterization of the Petitioners' Petition for Writ of Certiorari, they merely note such objections here and incorporate their own Petition in response thereto.

DISCUSSION

The Government does not argue in its Brief for the United States that the Petitioners' Petition for Writ of Certiorari should be denied.[1/] Rather, the Government asserts that the Court should grant the Government's Petition for Writ of Certiorari filed in *United States v. Brockamp*, 67 F.3d 260 (9th Cir. 1995), *petition for cert. filed*, No. 95-1225 (Jan. 31, 1996), and that the Petition for Writ of Certiorari in this case should be held pending the Court's disposition of *Brockamp*.[2/] The Government's proposal, however,

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[1/] In fact, the Government acknowledges, as it must, that the legal issue in this case is the same as in the *Brockamp* and *Scott* cases in which the Government has filed its own Petition for Writ of Certiorari.

[2/] The Government also references certain legislative proposals as being "under consideration." *See* Brief of the United States at 5, n. 1. However, any such uncertain legislative initiative should have (continued...)

overlooks important considerations which favor the granting of the Petition for Writ of Certiorari in this case.

Petitioners and the Government agree that the decision of the Fourth Circuit in this case directly conflicts with the decision of the Ninth Circuit in *Brockamp*. Although the question presented here involves the same issue of law set forth in *Brockamp*, this case concerns a significantly greater sum that was wrongfully withheld by the Internal Revenue Service than the tax refund claims disputed in *Brockamp* and in its companion case, *United States v. Scott*, Nos. 94-15321, 15323 (9th Cir. Oct. 5, 1995), *petition for cert. filed*, No. 95-1225 (Jan. 31, 1996). In addition, as stated more fully in the Petitioners' Petition at pages 20 through 23, the reasoning employed by the Fourth Circuit in reaching its decision in this case rests on an unprecedented reading of *Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990), and should be addressed directly by the Court in this case.

2/ (...continued)
no impact upon this Court's consideration of the Government's or Petitioners' certiorari petitions.

Moreover, in light of the directly conflicting decisions of the Fourth and Ninth Circuits -- one in favor of the Government and one in favor of the taxpayers -- holding this case for decision pending the disposition of *Brockamp,* as the Government suggests, is judicially inefficient. The interests of justice would be better served by granting the Petition for Writ of Certiorari in this case as well as the petition in the *Brockamp* and *Scott* cases and consolidating the cases. The issuance of divergent opinions by the Fourth and Ninth Circuits within three days of each other presents the Court with an unusual opportunity to fully address the discrete issue of law presented by these cases with the benefit of full legal argument from the different perspectives represented. Similarly, the differing fact patterns presented in this case, *Brockamp*, and *Scott* create a broader spectrum of circumstances from which the Court can comprehensively consider the legal issue common to these cases. Complete, collaborative efforts of all counsel will assist the Court by ensuring full and effective development of the question presented for review.

Given the substantive and administrative importance to the tax laws of the equitable principle presented by this case, as well as by *Brockamp* and *Scott*, it is appropriate that the Court grant both Petitions for Writ of Certiorari and consolidate the cases for further consideration. Should the Court choose not to consolidate the cases, however, it should not yield to the Government's suggestion that *Brockamp* is a more appropriate vehicle for resolution of the common question presented. Rather, the Petition for Writ of Certiorari in this case, involving a significant refund claim disposed of by the Fourth Circuit through an unprecedented interpretation of *Irwin*, should be granted.

CONCLUSION

Petitioners respectfully request that this Court grant their Petition for Writ of Certiorari. In addition, Petitioners also request that if the Petition for Writ of Certiorari in *United States v. Brockamp* and *United States v. Scott*, No. 95-1225, is also granted, the cases be consolidated for purposes of further argument and disposition.

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